

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL TRAVIS BURBA,

Case No. 09-11961

Plaintiff,

Paul D. Borman
United States District Judge

vs.

NICK LUDWICK, *et al.*,

Michael Hluchaniuk
United States Magistrate Judge

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL WITHOUT PREJUDICE (Dkt. 15)**

This matter is before the Court on plaintiff's motion for appointment of counsel. (Dkt. 15). Plaintiff, an inmate currently at the Oaks Correctional Facility, brings this action under 42 U.S.C. § 1983, claiming a violations of his rights under the United States Constitution. (Dkt. 1). Plaintiff alleges that the defendants failed to protect him by allowing another prisoner into his cell, where he was subsequently assaulted. *Id.* On June 18, 2009, this case was referred to the undersigned for all pretrial purposes by District Judge Paul D. Borman. (Dkt. 9).

In support of his request for counsel, plaintiff states that he is unable to afford counsel, his imprisonment will limit his ability to litigate, and he has limited

access to the law library and limited knowledge of the law, which will limit his ability to litigate this case. (Dkt. 15).

Under 28 U.S.C. § 1915(e)(1), a federal court may request an attorney to represent an indigent plaintiff. *Reneer v. Sewell*, 975 F.2d 261 (6th Cir. 1992). Except in rare circumstances, it is the practice of this Court to consider the appointment of counsel in prisoner civil rights cases only where exceptional circumstances exist, or in certain cases only after a motion to dismiss or for summary judgment has been decided. In order to make the determination whether there are exceptional circumstances to appoint counsel, the Court considers the type of case involved, plaintiff's ability to represent himself, as well as the complexity of the case, and also whether the claims being presented are frivolous or have a small likelihood of success. *Reneer*, 975 F.2d at 261; *see also, Mars v. Hanberry*, 752 F.2d 254, 256 (6th Cir. 1995).

It appears that, from reading the complaint, plaintiff has an adequate understanding of the issues and matters involved in this case, and is able to articulate the claims and arguments in a reasonable fashion. It also appears that the issues raised in his complaint are straightforward and understandable and not of an unduly complex nature. Should dispositive motion(s) be decided in plaintiff's favor, plaintiff may re-file the motion for the appointment of counsel.

Plaintiff's motion for appointment of counsel is **DENIED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not assign as error any defect in this Order to which timely objection was not made. Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), objections must be served on this Magistrate Judge.

Date: August 13, 2009

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on August 13, 2009, I electronically filed the foregoing pleading with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: Julia R. Bell, and I certify that I have mailed by United States Postal Service the foregoing pleading to the plaintiff, a non-ECF participant, at the following address(es): Samuel Travis Burba, #218577, OAKS CORRECTIONAL FACILITY, 1500 Caberfae Highway, Manistee, MI 49660.

s/James P. Peltier
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